

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

\_\_\_\_\_,  
8 Quail Crossing  
Rochester, Illinois 62563  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

DANAHER CORPORATION  
2200 Pennsylvania Avenue, N.W.,  
Suite 800W, Washington, DC,

RAINER M. BLAIR  
2200 Pennsylvania Avenue, N.W.,  
Suite 800W, Washington, DC,

and

MATT MCGREW  
2200 Pennsylvania Avenue, N.W.,  
Suite 800W, Washington, DC,

Defendants.

**Case No.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Danaher Corporation (“Danaher” or the “Company”), analysts’ reports

and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Danaher securities between April 21, 2022, and April 24, 2023, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Danaher designs, manufactures, and markets professional, medical, industrial, and commercial products and services worldwide. The Company is comprised of more than 20 operating companies organized under four segments: Biotechnology; Life Sciences; Diagnostics; and Environmental & Applied Solutions.

3. In 2020 and 2021, Danaher’s diagnostic tests and life sciences research tools were widely used in the effort to combat the COVID-19 virus. Specifically, Danaher’s diagnostics segment included Cepheid, a leader in molecular testing, and its life sciences segment included a variety of companies that worked to develop COVID-19 vaccines and therapies. As a result, Danaher experienced a significant upswing in both revenue growth over the course of this period.

4. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) as the severity of the COVID-19 pandemic subsided, revenue growth associated with Danaher’s COVID-19-related

businesses was declining; (ii) contrary to the Company's prior representations to investors, revenues associated with Danaher's non-COVID-19-related businesses were insufficient to compensate for the foregoing negative trend; (iii) accordingly, Danaher overstated the Company's ability to sustain the growth it had experienced in 2020 and 2021; (iv) as a result, it was unlikely that Danaher would be able to meet its 2023 revenue forecasts; and (v) as a result, Defendants' public statements were materially false and/or misleading at all relevant times.

5. On April 25, 2023, Danaher issued a press release announcing its financial results for the first quarter of 2023. Among other items, Danaher reported that “[r]evenues decreased 7.0% year-over-year to \$7.2 billion, with a 4.0% non-GAAP core revenue decrease, due to the impact of lower COVID-19 revenue, and 6.0% non-GAAP base business core revenue growth.” The Company also projected that “[f]or the second quarter and full year 2023, . . . non-GAAP base business core revenue growth will be up mid-single digits year-over-year”, down from an earlier projection of high-single-digit growth. Notably, this announcement appeared to be at odds with Danaher's prior reassurances that revenues associated with the Company's non-COVID-19-related businesses would compensate for the foregoing negative results.

6. On this news, Danaher's stock price fell \$22.36 per share, or 8.79%, to close at \$231.99 per share on April 25, 2023.

7. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

## **JURISDICTION AND VENUE**

8. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

10. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Danaher is headquartered in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants' actions took place within this Judicial District.

11. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

## **PARTIES**

12. Plaintiff, as set forth in the attached Certification, acquired Danaher securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

13. Defendant Danaher is a Delaware corporation with principal executive offices located at 2200 Pennsylvania Avenue, N.W., Suite 800W, Washington, DC. Danaher's common stock trades in an efficient market on the New York Stock Exchange ("NYSE") under the ticker symbol "DHR".

14. Defendant Rainer M. Blair (“Blair”) has served as the Company’s Chief Executive Officer (“CEO”) and President at all relevant times.

15. Defendant Matt McGrew (“McGrew”) has served as the Company’s Chief Financial Officer (“CFO”) and Executive Vice President at all relevant times.

16. Defendants Blair and McGrew are sometimes referred to herein as the “Individual Defendants.”

17. The Individual Defendants possessed the power and authority to control the contents of Danaher’s SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Danaher’s SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Danaher, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

18. Danaher and the Individual Defendants are collectively referred to herein as “Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

19. Danaher designs, manufactures, and markets professional, medical, industrial, and commercial products and services worldwide. The Company is comprised of more than 20

operating companies organized under four segments: Biotechnology; Life Sciences; Diagnostics; and Environmental & Applied Solutions.

20. In 2020 and 2021, Danaher's diagnostic tests and life sciences research tools were widely used in the effort to combat the COVID-19 virus. Specifically, Danaher's diagnostics segment included Cepheid, a leader in molecular testing, and its life sciences segment included a variety of companies that worked to develop COVID-19 vaccines and therapies. As a result, Danaher experienced a significant upswing in both revenue growth over the course of this period.

**Materially False and Misleading Statements Issued During the Class Period**

21. The Class Period begins on April 21, 2022, when Danaher issued a press release reporting the Company's Q1 2022 results. The press release quoted Defendant Blair, stating, in relevant part:

“We had a good start to the year with results exceeding our initial expectations. Our team successfully navigated a dynamic environment to deliver double digit core revenue growth, approximately 10% adjusted earnings per share growth and \$2.0 billion of operating cash flow, despite difficult prior year comparisons. This performance was broad based with all three of our segments delivering high-single digit or better core revenue growth. We believe our strong execution combined with investments in innovation have driven market share gains in many of our businesses.”

22. That same day, Danaher hosted an earnings call with investors and analysts to discuss the Company's Q1 2022 results (the “Q1 2022 Earnings Call”). During the scripted portion of the Q1 2022 Earnings Call, Defendant Blair stated, in relevant part:

We are off to a good start in 2022 with the first quarter coming in ahead of our initial expectations. The team navigated a challenging operating environment to deliver strong revenue, earnings and cash flow growth. And our performance was broad-based with high single-digit or better core revenue growth in each of our three segments. Now during the first quarter, we continued to strengthen our competitive advantage through high-impact growth investments in innovation and bio-processing production capacity, both of which we believe are contributing to market share gains. Now, clearly, our well-rounded results are really a testament to our team's commitment to continuous improvement and to the unique positioning

of our portfolio. We just have an exceptional collection of businesses, all powered by the Danaher Business System that serve attractive end markets with durable secular growth drivers and it's this combination that differentiates Danaher today and provides a strong foundation for the future.

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So now, let's briefly look ahead to our expectations for the second quarter and the full year. In the second quarter, we expect to deliver mid single-digit core revenue growth in our base business, which includes a headwind of approximately 200 to 300 basis points from the ongoing COVID-19 related shutdowns in China. ***For the full year 2022, there is no change to our previous guidance of high single-digit core revenue growth in our base business as we expect the shutdowns in China to normalize as we move through the remainder of the year.*** We continue to expect both a low single-digit core growth headwind from COVID-19 testing and overall mid-single-digit core revenue growth.

So to wrap up, we had a good start to the year and look forward to building on this foundation as we move through 2022. Our first quarter results are a testament to the dedication of our outstanding team and their commitment to executing with the Danaher Business System. And these results also reflect the unique positioning of our portfolio and the exceptional collection of high-quality franchises that comprise Danaher today. We believe the durability of our businesses where consumables now represent 75% of revenue, positions us exceptionally well in today's dynamic operating environment. So this powerful combination of our talented team, the strength of our portfolio and the Danaher Business System differentiates Danaher and reinforces our sustainable, long-term competitive advantage.<sup>1</sup>

23. Further, during the Q&A portion of the Q1 2022 Earnings Call, when asked to discuss the impact of order trends on revenues, Defendant Blair responded, in relevant part:

[. . .] order activity continues to be very, very strong. Last year, our orders in the first quarter were up over 90%. And so we anticipated that our orders in Q1 of this year would be down but nonetheless, we continue to build backlog here in Q1 as well in the bioprocessing area. ***And this is why we're so confident in our core growth guide here for the year and bioprocessing of high single digit, low double digits between the robust growth that we're seeing and the backlog that we have, that's really important.***

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<sup>1</sup> All emphases included herein are added unless otherwise stated.

24. Finally, during the Q&A portion of the Q1 2022 Earnings Call, when asked whether the Company's 2022 high single, low-double digit guide "incorporate[d] \$2 billion from COVID,"

Defendant Blair responded, in relevant part:

***Really, the way we are thinking about that business is, again, in aggregate, and we do believe that both the underlying strength of the markets as I just laid out, as well as the strength of our backlog, which continues to grow, support both the high-single digit, low-double digit bioprocessing guide for the year. And as you think about COVID within that, COVID is going to do what it does, but there is a larger market that is growing rapidly and we are going to continue to see fluctuation as it relates to COVID volumes, whether there is a decision on booster for different age groups, whether it becomes part of an annualized immunization regimen. All of these are open questions. And our belief is that COVID is a part of our business, but there is another part of this business, which is larger, it is growing at a faster rate and we are making investments to ensure that we capture the appropriate shares here. So [. . .] high-single digits, low-double digits bioprocessing growth for 2022.***

25. On July 21, 2022, Danaher issued a press release announcing the Company's Q2 2022 results. The press release quoted Defendant Blair, stating, in relevant part:

"We are pleased with our strong start to 2022. Our teams executed well in a challenging environment to deliver high-single digit core revenue growth, double-digit adjusted earnings per share growth and \$2.0 billion of operating cash flow. We were particularly encouraged with the high-single digit growth in our base business and believe we gained market share across the portfolio."

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"Danaher is comprised of high-quality franchises in attractive end markets with meaningful recurring revenues and durable business models. We believe the combination of our strong portfolio and talented team—all powered by the Danaher Business System—provides a strong foundation in today's dynamic operating environment and positions us well for the balance of 2022 and beyond."

26. That same day, Danaher hosted an earnings call with investors and analysts to discuss the Company's Q2 2022 results (the "Q2 2022 Earnings Call"). During the scripted portion of the Q2 2022 Earnings Call, Defendant Blair stated, in relevant part:

So let me start with, we had a great quarter. In fact, our strong second quarter results rounded out a terrific first half of the year. Broad-based strength across the portfolio



drove better than expected revenue, earnings and cash flow. And we were particularly pleased with the performance of our base business, which through high single digits and believe we gain market share in many of our businesses. Now these results are a testament to our team's strong commitment to executing in a challenging operating environment. They have done an incredible job, leveraging the Danaher business system to help mitigate supply chain constraints, manage inflationary pressures, and improve our competitive positioning with impactful new innovation.

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We are seeing our customers continue the healthy transition away from COVID-19 vaccines and therapies, and into previously paused and new programs for other modalities. As a result, we now expect COVID-19 vaccine and therapeutic revenue of approximately \$1 billion in 2022 down from approximately \$2 billion in 2021.

Now that said, there is no change to our high-single to low-double digit core revenue growth outlook in our bioprocessing business for the year as customers are accelerating their investments across all other major therapeutic modalities. This acceleration, paired with improving price realization, is driving more than 20% core growth in our non-COVID business, up from the low-double digit growth we've seen historically.

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In a third quarter, we expect to deliver high-single-digit core revenue growth in our base business. We expect a mid-single-digit core revenue growth headwind from COVID-19 testing resulting in low-single-digit core revenue growth overall. For the full year 2022 there is no change to our previous guidance of high-single-digit core revenue growth in our base business and mid-single-digit core revenue growth overall. Given our strong second quarter performance, we now expect operating fall through at the high end of our previously communicated range of 20% to 25% for the full year.

So to wrap up, we're really pleased with our strong second quarter and first half performance. Our results are a testament to the team's consistent execution in a dynamic operating environment, and to the durable balanced position of our portfolio today. Looking ahead, our team's commitment to executing with the Danaher Business System, our differentiated portfolio of businesses serving attractive end markets and our strong balance sheet all positioned Danaher to continue delivering sustainable long-term performance.

27. Further, during the Q&A portion of the Q2 2022 Earnings Call, when asked to discuss the Company's growth prospects, Defendant Blair responded, in relevant part:

Now, as we think about our 2023 guide, which I think, is what part of your question was trying to tease out, we feel good about our mid-single digit plus positioning there where for, for the long term, which we have talked about in a number of occasions. And when you unpack that a little bit, we see bioprocessing could be up high single digit and that's consistent with what we've spoken of. And as you look at bioprocessing, there we continue to think that the non-COVID business is going to be growing very strong.

You saw what we're doing here in the second half of the year with growth rates, well, over 20% in non-COVID, and then we've also, de-risked the discussion here relating COVID related therapeutics and vaccines. We see \$1 billion of revenue in 2022, and that's down from \$2 billion in 2021. And we'd probably say \$500 million for 2023. So 2021, \$2 billion, 2022, \$1 billion and 2023 \$500 million for COVID-related vaccine.

And having said all that, we still see our biotechnology business growing at high single digits. And that leads you then with COVID testing. And we've talked about that at length. We speak to our customers about that. They still think that COVID goes endemic at the end of 2023, beginning of 2024. And we still think our framework of about \$1.2 billion of COVID testing revenue in 2023, which is roughly around 30 million tests, is the right way to think about it.

So when you put all that together we feel very good about the way we're positioned here from a core growth perspective, think mid-single digit plus on the base business. And then, from a COVID headwind perspective, think low-single, mid-single headwind overall giving you a solid low single digit 2023.

28. On October 20, 2022, Danaher issued a press release reporting the Company's Q3 2022 results. The press release quoted Defendant Blair, stating, in relevant part:

"We are pleased with our third quarter performance. The team maintained strong momentum in a challenging operating environment to deliver double-digit core revenue growth and solid margin expansion, earnings growth and cash flow generation. Our growth was broad-based across all three segments, a testament to the durability and attractive end-market positioning of the franchises that comprise Danaher."

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"As we look ahead, we believe the strength of our portfolio combined with our talented team and the power of the Danaher Business System provides a strong foundation to continue delivering meaningful shareholder value through 2022 and beyond."

29. That same day, Danaher hosted an earnings call with investors and analysts to discuss the Company's Q3 2022 results (the "Q3 2022 Earnings Call"). During the scripted portion of the Q3 2022 Earnings Call, Defendant Blair stated, in relevant part:

Our positive momentum continued in the third quarter with 10% core revenue growth and solid earnings and cash flow performance. This strength was based across the portfolio with high single-digit or better core growth in all three reporting segments.

We're particularly pleased with the consistent performance of our base business which has grown high single digits or better for nine consecutive quarters. Now these well-rounded results were driven by our team's outstanding execution through a challenging operating environment. They've done a terrific job running the Danaher playbook to proactively reduce structural costs while continuing to accelerate high-impact growth investments. We believe our ability to deliver meaningful innovation and reliably serve customers, has contributed to market share gains in many of our businesses.

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Now for the full year 2022, there is no change to our previous guidance of high single-digit core revenue growth in our base business. We now expect high single-digit overall core revenue growth, which is up from our prior expectation of mid-single digits as a result of our strong COVID-19 testing performance in the third quarter. We continue to expect operating profit fall through of approximately 25% for the full year.

30. Further, during the scripted portion of the Q3 2022 Earnings Call, when asked to discuss the Company's approach to cost as demands associated with the COVID-19 pandemic slowed, Defendant Blair responded, in relevant part:

So we have [ . . . ] invested significantly in order to drive -- to be able to supply the demand here during the pandemic and watch very carefully where our capacity needs to be, one, to, of course, serve the needs of the pandemic, but also to fuel the growth in our non-COVID testing business. And that continues to grow very well here. *You saw the very strong growth we had in COVID, but not to be underestimated, the very nice 10% growth in non-COVID off of a very strong comp in the prior year.*

31. Finally, during the Q&A portion of the Q3 2022 Earnings Call, when asked to discuss the Company's 2023 projections for its Bioprocessing segment, Defendant Blair responded, in relevant part:

As you can imagine, we're very focused on delivering the fourth quarter here and the full year. But as we think about '23, and I say that because there's a lot of data points to collect here in the fourth quarter as well in such a dynamic environment.

And so as we think about the Bioprocessing business for 2023, we still think that there is room for \$500 million of COVID opportunity in order to support the needs of the population, the variance to replenish expired sell-by dates and all the things that you can think about. But of course, that's a number that we watch very closely.

***More importantly, we think that the non-COVID business, which, of course, will again proportionately be a much larger part of the business, will continue to be very robust. Funding levels are there, the number of modalities that continue to grow in the pipeline is broad, our own project activity in early, mid- and late stage is very strong.***

32. On January 24, 2023, Danaher issued a press release announcing the Company's full year 2022 results. The press release quoted Defendant Blair, stating, in relevant part:

"2022 was another great year for Danaher. Broad-based strength across the portfolio helped us deliver nearly 10% core revenue growth and double-digit earnings per share growth. Our team executed well in a challenging operating environment, enabling us to expand operating margins and generate strong cash flows. We believe this strong execution, paired with our investments in innovation drove market share gains in many of our businesses."

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"Looking ahead, we believe the combination of our leading portfolio, the power of the Danaher Business System and the strength of our balance sheet position Danaher to continue generating sustainable, long-term shareholder value for many years to come."

33. That same day, Danaher hosted an earnings call with investors and analysts to discuss the Company's full year 2022 results (the "2022 Earnings Call"). During the scripted portion of the 2022 Earnings Call, Defendant Blair stated, in relevant part:

Our terrific fourth quarter results rounded out another great year for Danaher. Broad-based strength across the portfolio drove nearly 10% core growth, strong earnings growth and free cash flow generation. We're particularly pleased with the performance of our base business, which grew high single digits for the year and has now grown high single digits or better each of the last 10 quarters.

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Now based on discussions with our customers, we believe COVID-19 will enter an endemic disease state in 2023, and as a result, expect to ship 30 million respiratory tests and generate \$1.2 billion of revenue for the full year.

As hospitals and health systems begin planning for their endemic testing needs, we're increasingly seeing customers consolidate their point-of-care PCR testing platforms on to Cepheid's GeneXpert. Our customers' preference for the GeneXpert for both respiratory and non-respiratory testing is a result of the significant value of the unique combination of fast, accurate lab quality results and a best-in-class workflow provide clinicians. The combination of these advantages, the broadest molecular diagnostic test menu on the market and our leading global installed base creates significant opportunities ahead for Cepheid's point-of-care solutions.

34. On February 22, 2023, Danaher filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2022 (the "2022 10-K"). In providing an overview of the Company's business, the 2022 10-K stated, in relevant part:

Danaher is a global science and technology innovator committed to helping customers solve complex challenges and improving quality of life around the world. Danaher is comprised of more than 20 operating companies with leadership positions in the biotechnology, life sciences, diagnostics, environmental and applied sectors, organized under four segments (Biotechnology; Life Sciences; Diagnostics; and Environmental & Applied Solutions). United by the DANAHER BUSINESS SYSTEM ("DBS"), our businesses are also typically characterized by a high level of products and services that are sold on a recurring basis, primarily through a direct sales model and to a geographically diverse customer base. Our business' research and development, manufacturing, sales, distribution, service and administrative facilities are located in more than 60 countries.

Danaher strives to create shareholder value primarily through three strategic priorities:

- strengthening our competitive advantage through consistent application of DBS tools;
- enhancing our portfolio in attractive science and technology markets through strategic capital allocation; and
- consistently attracting and retaining exceptional talent.

Danaher measures its progress against these strategic priorities over the long-term based primarily on financial metrics relating to revenue growth, profitability, cash flow and capital returns, as well as certain non-financial metrics. To further the strategic objectives set forth above, the Company also acquires businesses and makes investments that either complement its existing business portfolio or expand its portfolio into new and attractive markets. Given the rapid pace of technological development and the specialized expertise typical of Danaher's served markets, acquisitions, strategic alliances and investments provide the Company access to important new technologies and domain expertise. Danaher believes there are many acquisition and investment opportunities available within its targeted markets. The extent to which we identify, consummate and effectively integrate appropriate acquisitions and consummate appropriate investments affects our overall growth and operating results. Danaher also continually assesses the strategic fit of its existing businesses and may separate or otherwise dispose businesses based on strategic and other considerations. In particular, we have announced our intention to separate Danaher's Environmental & Applied Solutions segment to create a publicly-traded company in the fourth quarter of 2023, subject to the satisfaction of customary conditions, including obtaining final approval from the Danaher Board of Directors, satisfactory completion of financing and receipt of tax opinions, favorable rulings from the Internal Revenue Service and other regulatory approvals.

DBS is not only the set of business processes and tools our operating companies use on a daily basis, but is more broadly our culture. As reflected in our logo, DBS features five core values (the "Core Values"):

1. The Best Team Wins
2. Customers Talk, We Listen
3. Kaizen is our Way of Life
4. Innovation Defines our Future
5. We Compete for Shareholders

Underpinned by these five Core Values as well as our Shared Purpose – *Helping Realize Life's Potential*, the DBS tools are organized into four pillars that are

designed to apply to every aspect of our business: Growth, Lean, Leadership and the DBS Fundamentals.

The idea for Danaher originated in the early 1980s when the Company's founders, Steven M. and Mitchell P. Rales, envisioned a business that would generate sustainable long-term value for customers, associates and shareholders. Through a series of acquisitions and divestitures, Danaher has evolved over time into the science and technology innovator it is today. While the operating companies that make up Danaher have changed, DBS continues to be the guiding philosophy for the Company.

35. Appended to the 2022 10-K as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 by the Individual Defendants, attesting that the "information contained in [the 2022 10-K] fairly presents in all material respects the financial condition and results of operations of Danaher Corporation."

36. The statements referenced in ¶¶ 21-35 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) as the severity of the COVID-19 pandemic subsided, revenue growth associated with Danaher's COVID-19-related businesses was declining; (ii) contrary to the Company's prior representations to investors, revenues associated with Danaher's non-COVID-19-related businesses were insufficient to compensate for the foregoing negative trend; (iii) accordingly, Danaher overstated the Company's ability to sustain the growth it had experienced in 2020 and 2021; (iv) as a result, it was unlikely that Danaher would be able to meet its 2023 revenue forecasts; and (v) as a result, Defendants' public statements were materially false and/or misleading at all relevant times.

### **The Truth Emerges**

37. On April 25, 2023, Danaher issued a press release announcing its financial results for the first quarter of 2023. The press release stated, in relevant part:

Danaher [. . .] today announced results for the first quarter 2023. Net earnings refer to net earnings attributable to common shareholders.

For the quarter ended March 31, 2023 net earnings were \$1.4 billion, or \$1.94 per diluted common share and non-GAAP adjusted diluted net earnings per common share were \$2.36.

***Revenues decreased 7.0% year-over-year to \$7.2 billion, with a 4.0% non-GAAP core revenue decrease, due to the impact of lower COVID-19 revenue, and 6.0% non-GAAP base business core revenue growth.***

Operating cash flow was \$1.9 billion and non-GAAP free cash flow was \$1.7 billion.

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***For the second quarter and full year 2023, the Company anticipates that non-GAAP base business core revenue growth will be up mid-single digits year-over-year.***

Rainer M. Blair, President and Chief Executive Officer, stated, “We had a good start to the year in the first quarter. Our team’s focused execution in a challenging operating environment helped deliver better-than-expected revenue, earnings and cash flow. We are especially pleased with the performance of our base business, which grew 6.0% in the first quarter.”

Blair continued, “Looking ahead, we believe the combination of our leading businesses, the power of the Danaher Business System and the strength of our balance sheet differentiates Danaher and positions us to continue delivering sustainable, long-term shareholder value.”

38. On this news, Danaher’s stock price fell \$22.36 per share, or 8.79%, to close at \$231.99 per share on April 25, 2023.

39. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiff and other Class members have suffered significant losses and damages.

### **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

40. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise



acquired the Company's securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

41. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Danaher securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Danaher or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

42. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

43. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

44. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Danaher;
- whether the Individual Defendants caused Danaher to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Danaher securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

45. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

46. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Danaher securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

- Plaintiff and members of the Class purchased, acquired and/or sold Danaher securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

47. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

48. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

### **COUNT I**

#### **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)**

49. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

50. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

51. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Danaher securities; and

(iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Danaher securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

52. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Danaher securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Danaher's finances and business prospects.

53. By virtue of their positions at Danaher, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

54. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Danaher, the Individual Defendants had knowledge of the details of Danaher's internal affairs.

55. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Danaher. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Danaher's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Danaher securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Danaher's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Danaher securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

56. During the Class Period, Danaher securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Danaher securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Danaher securities was substantially lower than the prices paid by Plaintiff and the other

members of the Class. The market price of Danaher securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

57. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

58. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

### **(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)**

59. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

60. During the Class Period, the Individual Defendants participated in the operation and management of Danaher, and conducted and participated, directly and indirectly, in the conduct of Danaher's business affairs. Because of their senior positions, they knew the adverse non-public information about Danaher's misstatement of income and expenses and false financial statements.

61. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Danaher's financial condition and results of operations, and to correct promptly any public statements issued by Danaher which had become materially false or misleading.

62. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Danaher disseminated in the marketplace during the Class Period concerning Danaher's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Danaher to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Danaher within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Danaher securities.

63. Each of the Individual Defendants, therefore, acted as a controlling person of Danaher. By reason of their senior management positions and/or being directors of Danaher, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Danaher to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Danaher and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

64. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Danaher.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated:

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